

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wilbur	Team: Team # 3	CCRB Case #: 200914432	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/15/2009 6:30 PM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 3/15/2011	EO SOL 3/15/2011	
Date/Time CV Reported Wed, 09/16/2009 9:21 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/16/2009 9:21 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Simon Rashid	09170	942412	101 PCT
2. POM Andre Figueiredo	18440	936595	101 PCT
3. POM Christophe Kearney	16979	943429	101 PCT
4. POM Jonathan Navarrete	06128	944278	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Stacy Delphonse	31213	936429	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andre Figueiredo	Abuse: PO Andre Figueiredo stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM Christophe Kearney	Abuse: PO Christopher Kearney stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Simon Rashid	Abuse: PO Simon Rashid stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM Andre Figueiredo	Abuse: PO Andre Figueiredo threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
E.POM Christophe Kearney	Abuse: PO Christopher Kearney threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
F.POM Jonathan Navarrete	Force: PO Jonathan Navarrete hit § 87(2)(b) against a vehicle.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the Civilian Complaint Review Board on September 16, 2009, via telephone. § 87(2)(b) filed this complaint on behalf of his brother, § 87(2)(b) (Encl 2-2a), but did not witness this incident.

On September 15, 2009, at approximately 6:30 p.m., § 87(2)(b) was inside his vehicle parked outside of § 87(2)(b) in Queens, when he was stopped by PO Andre Figueiredo, PO Christopher Kearney and PO Simon Rashid of the 101st Precinct. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Andre Figueiredo stopped the car in which § 87(2)(b) was an occupant.
- **Allegation B – Abuse of Authority:** PO Christopher Kearney stopped the car in which § 87(2)(b) was an occupant.
- **Allegation C – Abuse of Authority:** PO Simon Rashid stopped the car in which § 87(2)(b) was an occupant. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Andre Figueiredo threatened to damage § 87(2)(b)'s property. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Christopher Kearney threatened § 87(2)(b) with the use of force. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F – Force:** PO Jonathan Navarrete hit § 87(2)(b) against a vehicle. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statement

Complainant: § 87(2)(b)

§ 87(2)(b) filed this complaint on behalf of his brother, § 87(2)(b). The undersigned investigator spoke with § 87(2)(b) on September 24, 2009, who stated that he had not witnessed this incident. As such, § 87(2)(b) was not interviewed regarding this investigation (Encl 15-15g).

Victim: § 87(2)(b)

At the time of incident, § 87(2)(b) was § 87(2)(b) old and § 87(2)(b) is a black male, 5'4" tall, weighs 145 pounds with black hair and brown eyes (Encl 3-3g).

Arrest Photograph

An arrest photograph was taken of § 87(2)(b) on September 15, 2009. The photograph shows possible slight swelling to his right cheekbone, § 87(2)(g) (Encl 3f).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 1, 2009 (Encl 3-3g). On September 15, 2009, at approximately 6:30 pm, at § 87(2)(b) in Queens, § 87(2)(b) pulled up in front of his home. § 87(2)(b) shut off his vehicle, a white 2007 BMW 335i, and was on a "bluetooth" connected to his phone. § 87(2)(b) was parked in a legal parking spot for approximately ten minutes.

A police vehicle with three officers stopped next to § 87(2)(b)'s vehicle. The officers were identified via investigation as PO Andre Figueiredo, PO Christopher Kearney and PO Simon Rashid. § 87(2)(b) had noticed a police vehicle drive past his vehicle one to three minutes earlier, and believed it was the same vehicle. PO Rashid, the operator, rolled down his window and § 87(2)(b) rolled down his window as well and asked if he could help PO Rashid. § 87(2)(b) did not roll his window down the entire way. PO Rashid asked why § 87(2)(b) was parked there, and he responded that he parked in front of his residence. PO Rashid ordered § 87(2)(b) to step out of the car. § 87(2)(b) questioned the reason why several times. § 87(2)(b) did not indicate if he attempted to roll up his window.

PO Kearney exited the police vehicle and stuck his nightstick through § 87(2)(b)'s driver side window to prevent him from rolling it up and started to pry the window open. This did not cause any damage to the window. PO Figueiredo also exited the police vehicle and went over to the passenger side of § 87(2)(b)'s vehicle and said "I am going to break this fucking glass." PO Kearney then threatened to pepper-spray § 87(2)(b). § 87(2)(b) told PO Rashid to tell the other officers to step back, and then he would get out of the car. § 87(2)(b) believed that all the officers heard this. § 87(2)(b) voluntarily exited the car, PO Figueiredo grabbed the door and PO Rashid and PO Kearney told § 87(2)(b) to put his hands behind his back since he was going to be arrested. § 87(2)(b) physically resisted by not allowing the officers to rear-cuff him. § 87(2)(b) specifically held his arms stiff and attempted to move his body away from the officers for a few moments. § 87(2)(b) eventually allowed PO Figueiredo to handcuff him. At this point, PO

Rashid called for back up due to civilians who were beginning to walk to the scene. The only civilian that § 87(2)(b) recalled present was § 87(2)(b).

§ 87(2)(b) was already handcuffed by the time that the other officers arrived. § 87(2)(b) recalled that three to four marked cars and a couple of unmarked cars arrived. Two officers, identified via investigation as PO Stacy Delphonse and PO Jonathan Navarrete, were in the first vehicle to arrive. § 87(2)(b) stated that he was calm at this point. PO Navarrete slammed § 87(2)(b)'s head on the hood of § 87(2)(b)'s vehicle twice resulting in three dents on the top of the hood. This did not result in any injuries, but did cause pain to § 87(2)(b)'s head. Unidentified officers bent his arm up behind his back and placed him in one of the police cars at the scene. § 87(2)(b) § 87(2)(b)'s cousin, told him that she was able to take pictures of the incident.

PO Navarrete and PO Delphonse drove § 87(2)(b) to the 101st Precinct stationhouse and placed him in a holding cell. § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(b) provided photographs of the incident that were allegedly taken by § 87(2)(b) on September 15, 2009. The first two photos showed officers parked next to § 87(2)(b)'s vehicle and speaking to him through the car window. The third photo shows PO Kearney, PO Rashid and PO Figueiredo holding § 87(2)(b)'s hands behind his back. In this photo § 87(2)(b) and all three officers are standing freely. The last photo shows PO Navarrete firmly holding § 87(2)(b)'s head down on the hood of § 87(2)(b)'s vehicle while PO Kearney and PO Figueiredo have their hands on § 87(2)(b)'s back to keep him down on the hood (Encl 3b-3e).

On October 8, 2009, § 87(2)(b) called the undersigned investigator and stated that he had identified a second witness to this incident who would be willing to assist in this investigation, named § 87(2)(b) § 87(2)(b) provided § 87(2)(b)'s phone number and address.

Witness: § 87(2)(b)

At the time of incident, § 87(2)(b) was § 87(2)(b) - old and § 87(2)(b) is a black female, 5'2" tall, weighs 105 pounds with black hair and brown eyes. § 87(2)(g)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 28, 2010 (Encl 4-4c). On September 15, 2009, at approximately 6:00 p.m., § 87(2)(b) was inside of her home located at § 87(2)(b) in Queens. § 87(2)(b) was standing near an upstairs window that looks out onto § 87(2)(b). At approximately 6:00 p.m., § 87(2)(b) looked out the window and observed her uncle, § 87(2)(b) sitting in his vehicle in front of § 87(2)(b). § 87(2)(b) did not recall what prompted her to look out the window. § 87(2)(b) believed that § 87(2)(b) was in a legal parking but was not positive. § 87(2)(b) was on his cell phone and § 87(2)(b) assumed that his car was running as his headlights were on. § 87(2)(b) continued to observe § 87(2)(b) for five minutes before she observed two marked patrol cars stop in front of § 87(2)(b)'s vehicle. § 87(2)(b) had not seen any officers drive past § 87(2)(b) prior to this. § 87(2)(b) was only slightly paying attention at this point since she assumed

that § 87(2)(b) was going to receive a summons. § 87(2)(b) observed four officers exit the two vehicles. The four officers have been identified via investigation as PO Christopher Kearney, PO Simon Rashid, PO Christopher Kearney and PO Jonathan Navarrete. § 87(2)(b) indicated that the two police vehicles arrived at the beginning of the incident, and the investigation has conclusively determined that there was only one police vehicle at the onset of the incident, with another vehicle, containing PO Navarrete and PO Delphonse, arriving later. However, based on fact that PO Navarrete was the fourth male officer to arrive, the investigation determined that he was the fourth officer that § 87(2)(b) was referring to.

All four officers approached § 87(2)(b)'s driver's side window. The officers and § 87(2)(b) had a brief conversation that § 87(2)(b) could not hear as she was not fully paying attention. Although § 87(2)(b) could not hear the conversation it appeared to her that § 87(2)(b) and PO Rashid knew each other from a previous incident, based on a familiarity that she could not describe. Once § 87(2)(b) saw that this traffic stop was continuing she started to pay attention to what the officers and § 87(2)(b) were doing. § 87(2)(b) was listening to the conversation from the upstairs window of her home, and the conversation was occurring on street level. PO Rashid asked § 87(2)(b) to exit the vehicle, and § 87(2)(b) did not do so immediately and asked why that was necessary. PO Kearney asked § 87(2)(b) again to exit the vehicle and § 87(2)(b) did so on his own volition. Neither § 87(2)(b) nor the officers were yelling. When § 87(2)(b) saw that § 87(2)(b) was exiting his vehicle, she went downstairs to the sidewalk in order to better observe what was happening and was only a few feet away from where § 87(2)(b) and the officers were standing. Once § 87(2)(b) was entirely out of the vehicle, all four officers surrounded him and PO Kearney and PO Rashid grabbed § 87(2)(b)'s arms and attempted to put them behind his back in order to handcuff him. § 87(2)(b) became very upset and was physically resisting being handcuffed by pulling his body and his arms away from the officers and not allowing himself to be handcuffed. During this time, § 87(2)(b) asked the officers what they were doing, but none of the officers responded to § 87(2)(b). § 87(2)(b) saw one of the officers call on his radio for additional units to arrive. It took the four officers, three to four minutes to handcuff § 87(2)(b). § 87(2)(b) was eventually handcuffed free standing. He was not placed against anything in order to be handcuffed. The original four officers were the officers who handcuffed § 87(2)(b). Once § 87(2)(b) was handcuffed two marked additional police vehicles arrived. § 87(2)(b) continued to move his body back and forth and PO Rashid and PO Kearney pushed § 87(2)(b) against the driver's side door of his vehicle, but did not slam him against the door, and did so in order to fully restrain him. § 87(2)(b) never observed § 87(2)(b) being put against the hood of his vehicle, or slammed against it. Later, after the incident was concluded she did observe a few dents on an unknown part of § 87(2)(b)'s vehicle, however, § 87(2)(b) did not know where those dents came from. Once the additional police vehicles arrived, § 87(2)(b) was placed into one of the marked patrol vehicles and driven away. § 87(2)(b) became upset at this point and asked the officers in an agitated and loud fashion why § 87(2)(b) was being arrested. A few people had gathered at this point and § 87(2)(b) was arrested by PO Figueiredo for § 87(2)(b).

Upon being directly asked § 87(2)(b) did not recall any officer threatening to pepper-spray § 87(2)(b) but did recall that PO Kearney took his asp out and ran it against § 87(2)(b)'s driver's side window when the officers were attempting to have § 87(2)(b) exit his vehicle. PO Kearney told § 87(2)(b) that he was going to break the glass on § 87(2)(b)'s window. § 87(2)(b) did not observe PO Kearney stick his asp into § 87(2)(b)'s vehicle. § 87(2)(b) did not hear any officer use profanity during this incident. § 87(2)(b) noticed once § 87(2)(b) returned

from Central Booking that he had injuries to his wrists due to the tightness of the handcuffs but did not notice any other injuries on § 87(2)(b)

Attempts to Contact Civilians

§ 87(2)(b) was able to identify two witnesses who observed this incident and would be willing to participate in this investigation, § 87(2)(b) and § 87(2)(b). § 87(2)(b) provided a phone number for § 87(2)(b) but did not know her address. Given § 87(2)(b)'s common name, her address was unable to be determined through internet websites, Lexis-Nexis or, the NYPD's Booking, Arraignments and Dispositions System database. A search of the phone number provided for her via Lexis-Nexis was negative. Without a date of birth, a New York States Department of Motor Vehicle search could not be conducted. § 87(2)(b) was called three times between October 13, 2010, and November 13, 2010, but her phone number was out of service each time. As of the date of this report, § 87(2)(b) has not contacted the CCRB and as such has not participated in this investigation (Encl 15-15g).

On October 29, 2009, § 87(2)(b) missed a scheduled appointment with the CCRB without calling prior to cancel or reschedule it, and a missed appointment letter was mailed to his home that day. On November 11, 2009, and November 17, 2009, the undersigned investigator left messages for § 87(2)(b) asking that he call back to reschedule his appointment. Neither letter was returned to the CCRB by the United States Postal Service. As of the date of this report, § 87(2)(b) has not provided a statement to the CCRB (Encl 15-15g).

§ 87(2)(b) was arrested at the same time and location as § 87(2)(b). A please call letter was mailed to the address provided by § 87(2)(b) on his arrest report on October 8, 2010. A search of 411.com conducted on October 8, 2010, was negative for further contact information. A Lexis-Nexis search conducted on October 12, 2010, was negative for further contact information for § 87(2)(b). A final please call letter was mailed to § 87(2)(b) on October 13, 2010. As of November 15, 2010, § 87(2)(b) has not contacted the CCRB. Neither of the letters mailed to § 87(2)(b) were returned by the United States Postal Service to the CCRB (Encl 15-15g).

NYPD Statements:

Subject Officer: PO ANDRE FIGUEIREDO

- *PO Figueiredo is a § 87(2)(b) old white male, 5'10" tall, weighs 180 pounds with brown hair and brown eyes.*
- *On September 15, 2009, PO Figueiredo worked from 3:00 pm to 5:23 am on September 16, 2009. PO Figueiredo was originally assigned to a utility assignment, which was determined to be precinct security. He was later re assigned to sector patrol E and was partnered with PO Rashid and PO Kearney. This occurred at 3:30 p.m. The officers were dressed in uniform and were assigned to a marked RMP (Encl 5-5i).*

Stop, Question and Frisk Report

The Stop, Question and Frisk report filed for § 87(2)(b) was prepared on September 15, 2009 by PO Figueiredo. PO Figueiredo observe § 87(2)(b)'s vehicle for five minutes prior to approaching. § 87(2)(b) was suspected of grand larceny auto in the vicinity of § 87(2)(b) in Queens. § 87(2)(b) was stopped and frisked due to furtive movements, and

was searched after he was arrested. § 87(2)(b) was uncooperative and the physical force used against him was limited to placing him against a wall and handcuffed (Encl 5-5i).

§ 87(2)(b)

Supporting Deposition

PO Figueiredo's supporting deposition stated that § 87(2)(b) was fighting with officers, by locking his arms, flailing his arms, kicking his legs and pushing off police officers (Encl 5-5i).

Memo Book

PO Figueiredo's memo book indicates that at 6:30 p.m. at § 87(2)(b) in Queens, § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) determined via investigation to be § 87(2)(b) and § 87(2)(b) were also arrested for the above charges. At 7:02 p.m., PO Figueiredo returned to the 101st Precinct for arrest processing and released § 87(2)(b)'s belongings to his family. EMS was called to the stationhouse for § 87(2)(b) who was removed to § 87(2)(b) for an injury to his wrist (Encl 5-5b).

CCRB Testimony

PO Figueiredo was interviewed at the CCRB on December 23, 2009 (Encl 5h-5i). On September 15, 2009, at approximately 6:00 p.m., PO Figueiredo, PO Rashid and PO Kearney were patrolling in the vicinity of § 87(2)(b) which is a drug-prone area. Several days prior to this incident, a shooting had taken place in this area. One of the three officers observed § 87(2)(b) pull up in front of § 87(2)(b) in Queens, in his vehicle, a 2007 white BMW. § 87(2)(b) was illegally parked in front of a residential home. PO Figueiredo did not indicate how the car was illegally parked but did state that the car was idling for an excessive period of time. PO Figueiredo did not recall how he knew the car was running. PO Figueiredo observed § 87(2)(b) rummage through his center console. PO Figueiredo did not recall if § 87(2)(b) had been on his cell phone. The officers drove by approximately three times in ten minutes; § 87(2)(b) remained at the same location where the officers initially observed him.

PO Figueiredo, PO Rashid and PO Kearney parked their vehicle next to § 87(2)(b)'s vehicle and either PO Rashid or PO Kearney asked § 87(2)(b) what he was doing. § 87(2)(b) replied that he did not have to speak to the officers. The officers asked § 87(2)(b) if the vehicle he was in belonged to him, if he lived at the location and his name. PO Figueiredo did not recall how long the officers spoke to § 87(2)(b) from inside their vehicle. § 87(2)(b)'s driver's window had been opened but he closed it after the officers began to speak with him. The officers exited their vehicle and approached § 87(2)(b)'s vehicle. The officers asked § 87(2)(b) for his identification and why he raised his window. § 87(2)(b) was in his car with the window raised and said to the officers, "I don't have to talk to you, leave me the fuck alone and fuck off." PO Figueiredo did not see PO Rashid or PO Kearney stick their batons or asps through either the passenger or driver's side window plane in order to keep it open, nor did PO Figueiredo commit this action. PO Figueiredo did not recall whether either PO Rashid, PO Kearney or he threatened to "break the fucking glass in any of the windows." The officers spoke to § 87(2)(b) through his window for several minutes and asked him to exit his vehicle.

§ 87(2)(b) exited his vehicle although PO Figueiredo did not recall under what circumstances. PO Figueiredo walked around the front of the car, to the driver's side of his vehicle. All three officers approached § 87(2)(b) and attempted to question him. § 87(2)(b) stood outside his vehicle and quickly locked the door and placed the car keys in his pocket. PO Figueiredo asked § 87(2)(b) for his name and asked why § 87(2)(b) had not complied with the officers' directions. § 87(2)(b) stood in front of the officers and refused to answer their questions. § 87(2)(b) attempted to push past the officers by shoving them. § 87(2)(b) told the officers, "Fuck you, fuck off, I'm not telling you nothing." PO Figueiredo, PO Rashid and PO Kearney attempted to place § 87(2)(b) in handcuffs. § 87(2)(b) resisted being placed in handcuffs by crossing his arms in front of his body. PO Figueiredo, PO Kearney and PO Rashid got § 87(2)(b)'s arms to his side and § 87(2)(b) began flailing his arms and elbowing the officers. The officers struggled with § 87(2)(b) for a few minutes, attempting to grab § 87(2)(b)'s arms and handcuff him. One of the other officers requested assistance. PO Figueiredo could not recall who did. At no point did PO Figueiredo threaten to pepper-spray § 87(2)(b) nor did he hear another officer do so.

PO Delphonse and PO Navarrete were the first two additional officers who arrived at the scene. PO Figueiredo did not recall specifically how many officers arrived. PO Delphonse and PO Navarrete assisted PO Figueiredo, PO Rashid and PO Kearney in handcuffing § 87(2)(b). PO Figueiredo did not recall which officers specifically handcuffed § 87(2)(b) but stated that he did not observe PO Navarrete hit § 87(2)(b)'s head against the hood of his vehicle.

§ 87(2)(b) was brought to the 101st Precinct stationhouse where he requested medical treatment, complaining of injuries to his wrist. PO Figueiredo did not indicate which wrist. PO Figueiredo did not see any visible injuries on § 87(2)(b). EMS arrived and took § 87(2)(b) to § 87(2)(b) in Queens. PO Figueiredo drove § 87(2)(b)'s vehicle back to the stationhouse.

Subject Officer: PO CHRISTOPHER KEARNEY

- PO Kearney is a § 87(2)(b) old white male, 5'10" tall, weighs 155 pounds with black hair and green eyes.
- On September 16, 2009, PO Christopher Kearney, worked from 3:00 pm to 11:35 pm. PO Kearney was assigned to patrol sector E. PO Kearney was dressed in uniform and was partnered with PO Rashid and PO Figueiredo. PO Kearney was assigned to a marked RMP (Encl 6-6e).

Memo Book

PO Kearney's memo book indicates that at 5:00 p.m., the officers conducted a car stop at § 87(2)(b). § 87(2)(b) was in the vehicle and was uncooperative and locked himself in his car and rolled up the windows. After 10 minutes of trying to convince § 87(2)(b) to exit his vehicle, he exited and began physically fighting with police. Bystanders jumped in to aid § 87(2)(b) § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) by PO Figueiredo (Encl 6-6e).

CCRB Testimony

PO Kearney was interviewed at the CCRB on February 19, 2010 (Encl 6-6e). § 87(2)(g)

PO Kearney was operating the police vehicle and observed § 87(2)(b)'s vehicle idling for ten minutes in front of a vacant house. PO Kearney did not indicate how he knew the car was idling. PO Kearney approached § 87(2)(b) and questioned § 87(2)(b) as to what he was doing in the area. PO Kearney spoke with § 87(2)(b) for approximately two minutes before he tried to raise the window. PO Kearney removed his nightstick and stuck it in the two inch opening of § 87(2)(b)'s car window to stop him from raising it. PO Kearney did not want § 87(2)(b) to lock himself in the car for safety reasons. PO Kearney did not say, "I will break the fucking glass on this window." PO Kearney did not hear any other officer issue the aforementioned threat.

§ 87(2)(b) exited his vehicle on his own after ten minutes, and PO Kearney and PO Rashid attempted to handcuff him. The officers could not handcuff him because he had his arms crossed in front of his body. PO Kearney and PO Rashid tried to pull § 87(2)(b)'s arms apart. PO Kearney and PO Rashid could not handcuff § 87(2)(b). § 87(2)(b) cursed at the officers and told them, "Get off of me; I'm going to kill you." § 87(2)(b) continued to resist, by moving his body around and refusing to be handcuffed. PO Rashid called for backup and PO Delphonse and PO Navarrete were the first officers to arrive and stood in the background ready to assist. PO Kearney and PO Rashid pinned § 87(2)(b) against § 87(2)(b)'s vehicle by leaning him over the hood of the car with his head face down on the hood. § 87(2)(b) kicked back at the officers when he was leaned over the hood of the car. PO Kearney used his legs to block § 87(2)(b) from kicking him. § 87(2)(b)'s arms were beneath him when he tried to push himself off the hood of the car. PO Kearney and PO Rashid handcuffed § 87(2)(b) with the help of an additional unidentified officer. § 87(2)(b) was placed in a police vehicle and transported back to the 101st Precinct stationhouse. § 87(2)(b)'s car was taken back to the stationhouse as it was involved in the original offense.

PO Kearney did not see any injuries on § 87(2)(b) and did not recall if he complained of injuries. PO Kearney did not recall if § 87(2)(b)'s head was slammed against the hood of a car. PO Kearney recalled a small dent in the hood of § 87(2)(b)'s vehicle possibly from his body being pressed against it. PO Kearney and PO Rashid noticed the dent as they conducted an inventory search of the vehicle. PO Kearney recalled § 87(2)(b) was threatened with the use of pepper-spray when he resisted arrest to gain compliance, but did not recall who issued the threat.

Subject Officer: PO SIMON RASHID

- *PO Rashid is a § 87(2)(b) old Asian male, 6'0" tall, weighs 165 pounds with black hair and brown eyes.*
- *On September 15, 2009, PO Simon Rashid worked from 3:00 pm to 11:35 pm and was assigned to patrol sector E. PO Rashid was partnered with PO Kearney and PO Figueiredo. PO Rashid was dressed in uniform and was assigned to a marked RMP (Encl 7-7f).*

Memo Book

PO Rashid had entries in his memo book regarding this incident indicating that at approximately 6:30 p.m. there was an arrest due to stop, § 87(2)(b). PO Figueiredo arrested three individuals. Arrest number § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) for § 87(2)(b) (Encl 7-7f).

CCRB Testimony

PO Rashid was interviewed at the CCRB on December 21, 2009 (Encl 7-7d). On September 15, 2009, at approximately 6:00 p.m., PO Rashid, PO Kearney and PO Figueiredo observed § 87(2)(b)'s vehicle illegally parked in front of § 87(2)(b) a private residence, in Queens. PO Rashid could not recall how the car was parked illegally, but recalled that it was. The officers observed the vehicle for a second time a few minutes later parked in the same location with § 87(2)(b) inside. PO Rashid observed § 87(2)(b) moving things around in the center console. The vehicle's engine was running. PO Kearney and PO Figueiredo decided to ascertain who § 87(2)(b) was and what he was doing at that location.

PO Kearney and § 87(2)(b) lowered their windows. PO Rashid said something to the effect of, "Do you live here? Is this your car? Do you have a driver's license? Can we see your driver's license?" § 87(2)(b) may have asked the officers why he had to show them his driver's license and why they were questioning him. § 87(2)(b) did not answer PO Rashid's questions. § 87(2)(b) raised his window the entire way and locked himself inside the car. PO Rashid, PO Kearney and PO Figueiredo thought that § 87(2)(b) may not have had identification or had an active warrant.

PO Rashid, PO Kearney and PO Figueiredo stepped out of their car at the same time, and approached § 87(2)(b)'s car. PO Figueiredo stood next to PO Rashid and PO Kearney stood on the opposite side of the vehicle, the rear passenger side. PO Rashid asked § 87(2)(b) to step out of the vehicle. PO Rashid tried to coax § 87(2)(b) out of his vehicle with a calm demeanor. § 87(2)(b) yelled from inside his vehicle, "Why are you stopping me, what do you want?" § 87(2)(b) was belligerent and angry during this interaction.

The officers decided § 87(2)(b) would be arrested for either disorderly conduct or having his engine idling longer than state law allows. § 87(2)(b) lowered his window approximately one inch. PO Kearney attempted to keep § 87(2)(b)'s window open. PO Rashid did not specifically recall if PO Kearney used his nightstick to keep the window open, but believed it may be possible. § 87(2)(b) closed the car window. PO Rashid did not recall if PO Kearney said to § 87(2)(b) "I'll break the fucking glass." PO Rashid did not say this remark to § 87(2)(b). PO Rashid did not hear any officer threaten to spray § 87(2)(b) with pepper-spray, nor did he make this threat to § 87(2)(b).

§ 87(2)(b) opened the car door and PO Rashid pulled it all the way open. PO Rashid did not recall if § 87(2)(b) exited the vehicle voluntarily or if the officers forced him out. The officers' intention was to arrest § 87(2)(b) and get him handcuffed. PO Rashid, PO Kearney, PO Figueiredo and § 87(2)(b) stood between the two vehicles. § 87(2)(b) swung his arms and immediately resisted being handcuffed but he did not strike the officers. PO Figueiredo and PO Kearney attempted to handcuff § 87(2)(b). § 87(2)(b) swung his arms in the direction of the officers. PO Rashid called for additional officers, while PO Kearney and PO Figueiredo continued to deal with § 87(2)(b). PO Rashid did not see what took place during this time with § 87(2)(b) while he was calling for backup.

The first unit that arrived on scene was PO Navarrete and PO Delphonse. PO Navarrete assisted PO Kearney and PO Figueiredo with handcuffing § 87(2)(b). PO Rashid did not recall who handcuffed § 87(2)(b) but believed it was PO Kearney, PO Figueiredo, or himself. As § 87(2)(b) was handcuffed, PO Rashid assisted the officers in holding § 87(2)(b) down to

secure the handcuffs. PO Rashid noticed a dent on the hood of § 87(2)(b)'s vehicle after he had been placed on the hood so the officers could handcuff him.

PO Rashid, along with fellow officers, placed § 87(2)(b) in a holding cell at the 101st Precinct stationhouse. The officers asked § 87(2)(b) if he had been injured; § 87(2)(b) refused to answer the officers. The officers called for an ambulance and an EMT spoke with § 87(2)(b). PO Rashid did not see any visible injuries on § 87(2)(b) nor could he recall if § 87(2)(b) was transported to a hospital, but the ambulance was called due to the dent in § 87(2)(b)'s vehicle.

Subject Officer: PO JONATHAN NAVARRETE

- PO Navarrete is a § 87(2)(b) old Hispanic male, 5'9" tall, weighs 150 pounds, with brown hair and brown eyes.
- On September 15, 2009, PO Jonathan Navarrete worked between the hours of 3:00 p.m. until 11:35 p.m. PO Navarrete was assigned to patrol sector G. PO Navarrete worked with PO Delphonse and was in uniform. PO Navarrete was assigned to a marked RMP #2134 (Encl 9-9e).

Memo Book

PO Navarrete's memo book indicates that at 7:00 p.m., he responded to a dispute in progress, § 87(2)(g) (Encl 9-9e).

CCRB Testimony

PO Navarrete was interviewed at the CCRB on March 3, 2010 (Encl 9-9e). PO Navarrete was the recorder in a marked patrol vehicle driven by PO Delphonse. The officers were conducting patrol when they received a call for officers needing assistance at § 87(2)(b) in Queens. PO Navarrete and PO Delphonse were nearby and responded within one minute.

Upon arrival, PO Navarrete observed PO Rashid, PO Figueiredo and PO Kearney struggling to handcuff § 87(2)(b) while up against a civilian vehicle. § 87(2)(b) was flailing his arms and legs and screaming.

PO Navarrete went to assist the officers handcuff § 87(2)(b). PO Navarrete grabbed § 87(2)(b)'s left arm and tried to help the other officers place him in handcuffs. PO Navarrete estimated it was a couple of minutes before he, PO Figueiredo, PO Kearney and PO Rashid were able to handcuff § 87(2)(b).

§ 87(2)(b) did not calm down until he realized that he was going to be arrested and saw other officers arriving on the scene. PO Navarrete denied that § 87(2)(b)'s head was ever slammed against the hood of the civilian vehicle. § 87(2)(b) attempted once to raise his head when he was placed on the hood of the civilian vehicle and PO Navarrete placed § 87(2)(b)'s head back down, but did not excessively do so. PO Navarrete and PO Delphonse transported § 87(2)(b) shortly after he was placed in the vehicle.

Once at the stationhouse, PO Navarrete had no further interaction with § 87(2)(b) as he resumed his patrol duties. PO Navarrete stated that he never observed any injuries on § 87(2)(b) and never heard § 87(2)(b) complain of any injuries as he was being transported to the stationhouse.

Witness Officer: PO STACY DELPHONSE

- PO Delphonse is a § 87(2)(b) old black female, 5'7" tall, weighs 195 pounds with brown hair and brown eyes.
- On September 15, 2009, PO Delphonse worked from 4:00 p.m. until 12:00 am on September 16, 2009. She was assigned to patrol sectors C and D and was partnered with PO Navarrete. PO Delphonse was in uniform and assigned to a marked patrol vehicle (Encl 8-8d).

Memo Book

PO Delphonse's memo book indicates that at 7:00 p.m., she responded to a request for assistance at § 87(2)(b) in Brooklyn (Encl 8-8b).

CCRB Testimony

PO Delphonse was interviewed at the CCRB on February 17, 2010 (Encl 8-8d). § 87(2)(g)

When PO Delphonse arrived on scene, there were approximately twelve members of § 87(2)(b)'s family outside yelling and cursing at the officers. PO Delphonse observed PO Kearney, PO Navarrete, PO Figueiredo and PO Rashid all grab § 87(2)(b) by his shoulders and arms and the officers were keeping § 87(2)(b)'s legs steady while they handcuffed him. It took approximately five minutes to handcuff § 87(2)(b). During this time PO Delphonse was calming down the crowd. There were at least four people present and were yelling, asking why § 87(2)(b) was being arrested. PO Delphonse believed that at least two of the four people were arrested. Once § 87(2)(b) was handcuffed PO Delphonse placed him in her patrol vehicle and she and PO Navarrete drove him back to the precinct. PO Delphonse stated that after § 87(2)(b) was handcuffed the officers placed his head on his own vehicle, but his head was never slammed on the vehicle nor did PO Delphonse observe any dents on the vehicle.

Medical Records

Medical records were requested from § 87(2)(b) on October 8, 2009. Medical Records were requested from the FDNY regarding a pre-arraignment screening form (PASF) and an ambulance call report (ACR) on November 18, 2009 via a subpoena. Between the dates of May 21, 2010, and June 11, 2010, three calls were made to § 87(2)(b) to determine the status of the medical records; however, contact was unable to be made with the hospital. § 87(2)(g)

It was determined that § 87(2)(b)'s medical records were transferred to § 87(2)(b) storage facility. Two messages were left for the facility on November 29, 2010, and December 6, 2010. On December 7, 2010, the undersigned investigator spoke with an employee of § 87(2)(b), who indicated that paperwork would need to be submitted to retrieve the medical records. On December 7, 2010, the paperwork was submitted to § 87(2)(b). On December 13, 2010, Metal Quest called the undersigned investigator and left a message indicating that he was unable to locate § 87(2)(b)'s medical records. On December 22, 2010, the undersigned investigator received a letter from § 87(2)(b) indicating that at the current time,

they were unable to locate § 87(2)(b)'s medical records. § 87(2)(g) (Encl 15-15i).

On June 16, 2010, the undersigned investigator spoke with an employee of the FDNY regarding the ACR and PASF. He stated that there is no PASF on file, and did not believe that there was an ACR but he would fax it, if one was found. As of the date of this report, medical records have not been received for this investigation, nor has the ACR or PASF. § 87(2)(g) (Encl 15-15i).

NYPD Documents

SPRINT Report

The SPRINT report for this incident, T10998, indicates that members of patrol sector E of the 101st Precinct requested assistance for crowd control at 6:30 p.m. at § 87(2)(b) in Queens. Sector A and an unidentified sergeant responded. Although PO Janice Collins and PO Yvonne Barnes are assigned to sector A, it was determined via investigation that PO Navarette and PO Delphonse were the first to respond to the call for assistance. The sergeant did not respond until 7:03 p.m. and only responded to the scene to verify the arrest of three individuals (Encl 10-10a).

Roll Call

The roll call for the 101st Precinct on September 15, 2009, indicates that PO Kearney and PO Rashid were assigned to patrol sector E and PO Figueiredo was assigned to a utility assignment. PO Delphonse and PO Navarrete were assigned to patrol sector G (Encl 11-11c).

Command Log

The command log for the 101st Precinct on September 15, 2009, indicates that § 87(2)(b) and § 87(2)(b) were arrested by PO Figueiredo. It indicates that § 87(2)(b) complained of a sprained hand and requested medical attention. He was taken to § 87(2)(b), and taken to Queens Central Booking after midnight on September 16, 2009. There is no mention of any injuries to § 87(2)(b)'s head (Encl 11d).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of April 20, 2010. Although the entry regarding the notice of claim search only identifies § 87(2)(b) as the subject of the search, the search was conducted for both § 87(2)(b) and § 87(2)(b) (Encl 14).

Civilians' Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians' CCRB History

- [§ 87(2)(b)] filed the following CCRB complaint. [§ 87(2)(b)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject Officers' CCRB History

- PO Jonathan Navarrete has been a member of the service for three years and there are no substantiated CCRB allegations against him (Encl 2-2h).
- PO Christopher Kearney has been a member of the service for three years and there are no substantiated CCRB allegations against him (Encl 2-2h).
- PO Andre Figueiredo has been a member of the service for five years and there is one substantiated CCRB allegation against him. In case number #200803055, an allegation of threat of force was substantiated against PO Figueiredo. The CCRB recommended and the NYPD imposed instructions in this case (Encl 2-2h).
- PO Simon Rashid has been a member of the service for four years [§ 87(4-b) § 87(2)(g)]
[REDACTED]
[REDACTED]

Conclusion

Identification of Subject Officers

- PO Figueiredo, PO Kearney, PO Rashid and PO Navarrete acknowledged that they interacted with [§ 87(2)(b)]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Andre Figueiredo stopped the car in which [§ 87(2)(b)] was an occupant.

Allegation B – Abuse of Authority: PO Christopher Kearney stopped the car in which [§ 87(2)(b)] was an occupant.

Allegation C – Abuse of Authority: PO Simon Rashid stopped the car in which [§ 87(2)(b)] was an occupant.

[§ 87(2)(b)] alleged that PO Figueiredo, PO Kearney and PO Rashid stopped his vehicle while he was sitting in it. [§ 87(2)(b)] stated that his vehicle was parked legally and was shut off. PO Figueiredo, PO Kearney and PO Rashid all alleged that [§ 87(2)(b)]'s vehicle was parked illegally and that they observed the vehicle idling for approximately ten minutes, which is illegal. [§ 87(2)(b)] presumed that [§ 87(2)(b)]'s vehicle was running, given that he had his vehicle's lights on, while he was sitting in it, speaking on his cell phone. Based on the type of vehicle that [§ 87(2)(b)] was driving, a 2007 BMW 335i, it does have daytime running lights which are active

only if the vehicle is turned on (Encl 1g). § 87(2)(g)

§ 87(2)(b) The vehicle and traffic law of the state of New York states “no person shall cause the engine of any vehicle, to idle for longer than three minutes while parking, standing or stopping (Encl 1).

§ 87(2)(g)

Allegation D – Abuse of Authority: PO Andre Figueiredo threatened to damage § 87(2)(b)

§ 87(2)(b)s property.

§ 87(2)(b) stated that PO Figueiredo threatened to break his car window. PO Figueiredo, PO Kearney and PO Rashid all stated that this did not happen. § 87(2)(b) stated that she heard PO Kearney make this threat. § 87(2)(b) stated that prior to this threat PO Rashid ordered him out of the vehicle several times, and § 87(2)(b) refused each time, consistently asking the officers why this was necessary. According to § 87(2)(b) only after these constant refusals did PO Figueiredo threaten to break his window. Although § 87(2)(b) could not hear the entire conversation between the officers and § 87(2)(b) she did observe that § 87(2)(b) did not initially comply with the officers’ directives to exit the vehicle. § 87(2)(g)

Allegation E – Abuse of Authority: PO Christopher Kearney threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that PO Kearney threatened to use pepper-spray against him when § 87(2)(b) refused to exit his vehicle and roll down his car windows. PO Rashid and PO Figueiredo both stated that they never heard this threat. PO Kearney stated that he recalled that one of the officers threatened to use pepper-spray against § 87(2)(b) but did that later in the incident, when the officers were attempting to handcuff § 87(2)(b) and he was physically resisting. § 87(2)(b) stated that she did not hear an officer threaten to pepper-spray § 87(2)(b) however, she was listening to the conversation from an upstairs window of her home and could not hear the entire conversation. § 87(2)(b) does admit that § 87(2)(b) refused to comply with police directives to exit his vehicle, which is corroborated by § 87(2)(b) § 87(2)(g)

§ 87(2)(b) According to Patrol Guide procedure 212-95 “Pepper-spray is proper when used to affect an arrest of a resisting suspect or to eliminate the need for substantial physical force to affect an arrest or gain custody” (Encl 1a-1e). § 87(2)(g)

Allegation F – Force: PO Jonathan Navarrete hit § 87(2)(b) against a vehicle.

§ 87(2)(b) alleged PO Navarrete slammed his head onto § 87(2)(b)'s vehicle three times. All five officers involved stated that while PO Navarrete and the officers did use force to push § 87(2)(b) against the hood of his vehicle, PO Navarrete did not slam § 87(2)(b)'s head against the hood. All parties involved including § 87(2)(b) agree that he himself was physically resisting arrest which forced the officers to use physical force in order to restrain him. § 87(2)(b) stated that she did not witness the officers slam § 87(2)(b) into the hood of his vehicle; § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to Police Guide Procedure 203-11 “Only the amount of force necessary to overcome resistance will be used to effect an arrest” (Encl 1e-1f). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date